



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Greco Systems
File: B-237424
Date: February 15, 1990

Vito T. Greco, and C. R. McGill, for the protester.
Colonel Herman A. Peguese, Department of the Air Force, for the agency.
Penny M. Ahearn, Esq., David Ashen, Esq., and
John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where brand name or equal solicitation required descriptive material for equal offers in order to establish technical equivalency and two rounds of discussions were held, protester had ample opportunity to submit sufficient descriptive literature; agency was not required to remind offeror to furnish necessary information in its final proposal.
2. Under brand name or equal procurement for ruggedized disk drive components, award to brand name manufacturer based on upgraded components (new, state-of-the-art technology, 96 percent greater disk storage capacity than specified brand name equipment, and a 23 percent greater price), was proper where no other technically acceptable offers were received and agency reasonably determined there would be no different competition for the upgraded components.

DECISION

Greco Systems protests the award of a contract to Data General Corporation under request for proposals (RFP) No. F04611-89-R-0025, issued by the Department of the Air Force for brand name or equal ruggedized computer disk drive components. Greco contends that discussions of its own proposal were inadequate, and that the award was made to Data General on a basis other than that on which proposals were requested.

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We deny the protest.

The solicitation called for various Data General components (by model number), or equal, in accordance with certain minimum salient characteristics. The components are to be integrated with existing Data General computers. Award was to be made to the low, technically acceptable and responsible contractor that could meet the requirements within the desired delivery schedule. The RFP advised that descriptive literature was to be submitted for offers of other than the brand name items and would be evaluated to determine whether the products offered met the listed salient characteristics of the brand name equipment.

The Air Force received proposals from Greco, Data General, and a third firm. Greco submitted an "equal" offer, while Data General submitted an offer for its brand name components, and an alternate proposal for technology in excess of the stated requirements. The technical evaluation indicated that Greco had submitted insufficient information to establish the acceptability of its proposed equal. The Air Force gave the protester two opportunities to submit further material, but the evaluators found they still were unable to determine whether the protester's product met the salient characteristics. Consequently, the agency found Greco's proposal to be technically unacceptable and eliminated the firm from the competitive range, leaving Data General the only offeror in the competition.

The Air Force proceeded to evaluate Data General's alternate proposal, in which Data General proposed new, apparently state-of-the-art, disk-drive components. The evaluators determined that these components would provide 96 percent more disk storage capacity than the specified items; the price would be 23 percent higher than Data General's price for the specified brand name item. The agency considered the increased storage capacity in relation to the offered price to be cost effective and advantageous to the government, and determined that formally amending the solicitation and reopening the competition would not attract different competition; the Air Force therefore decided to accept Data General's alternate offer; it made award to the firm on September 28, 1989.

In its protest, Greco argues that the agency failed to advise the firm of the specific uncertainties in the firm's technical proposal, and that discussions thus were inadequate; the protester contends that its offered equipment in fact was technically superior to the brand name equipment. Greco further contends that the award was improper because

the agency changed the requirements from these stated in the RFP without providing Greco an opportunity to evaluate and respond to the new specification; the result, according to the protester, was an improper sole-source award.

The Air Force responds that while Greco was afforded several opportunities to submit additional information, and the firm in fact did so, the firm nevertheless failed to establish the equality of its equipment to the brand name equipment. Further, the agency maintains that amendment of the solicitation and a request for best and final offers (BAFOs) was unnecessary because Data General was the only offeror remaining in the competition and there was no reason to believe that amending the solicitation to specify Data General's state-of-the-art brand name item would have generated any different competition.

We find no basis to question the award to Data General.

First, we find nothing objectionable in the agency's discussions with Greco. The record indicates that discussions were held with Greco on two occasions and that after each round Greco supplied additional material concerning its proposed equipment. Among the information Greco submitted was a letter listing instances where the salient characteristics of the firm's offered equipment differed from the brand name (primarily in areas where Greco's equipment allegedly was faster than the brand name), but the agency found that this material did not clearly demonstrate the technical equivalency of Greco's equipment to the brand name.

Greco contends that the agency ignored the additional information it submitted, but our review indicates that for several of the salient characteristics Greco's response amounted to little more than a blanket statement that the Greco equipment "meets or exceeds all of the salient characteristics" and is "fully compatible" with Data General computers and equipment. It is well-established that such blanket statements of compliance or of the offeror's belief that its product is functionally equal to the brand name product are not enough to demonstrate equivalence; rather, the protester must affirmatively establish compliance with the salient characteristics. See BRS & Assocs., Inc., B-236883, Dec. 11, 1989, 89-2 CPD ¶ 539. In other areas, Greco's responses actually were found to raise doubt as to equivalence. For example, while the salient characteristics specified compliance with Military Standard MIL-STD-810D, Greco's proposal did not mention these specifications; indeed, Greco's response indicated that the firm's equipment was designed for "harsh environment applications where

commercially packaged equipment is not adequate and where full mil-spec equipment is not required." [Emphasis added.]

We conclude that the agency provided ample opportunity in two rounds of discussions for Greco to submit adequate literature, but that Greco failed to do so. Greco's proposal therefore properly was rejected as technically unacceptable.

We also find nothing objectionable in the agency's decision to make award to Data General based on its upgraded equipment. The determinative question in this regard is whether the competition would have been significantly different had a requirement for the increased capacity, as found in the upgraded Data General equipment, been included in the solicitation. See Optimum Sys., Inc., B-194984, July 16, 1980, 80-2 CPD ¶ 32. The Air Force specifically determined that the effect on competition would be nonexistent. Since only Data General, the brand name manufacturer, submitted a technically acceptable proposal, and the increased capacity disk drive components involved new, advanced technology, we agree with the Air Force that there was no reason to believe that there would be any potential competitors capable of (or interested in) proposing equipment with an increased disk storage capacity that also met the requirement for compatibility with the existing Data General computers. While the protester contends generally that its equipment was superior to the specified brand name equipment, it does not indicate that it could have offered equipment with the increased disk storage capacity now being procured. See Environmental Tectonics Corp., B-209423, Jan. 24, 1983, 83-1 CPD ¶ 81 (GAO will not disturb award, where agency failed to advise offerors of a change in requirements, in the absence of prejudice).

Finally, Greco contends that the agency failed to promptly notify it of its removal from the competitive range, so that the company could have protested to prevent contract award. Although Federal Acquisition Regulation § 15.1001(a) requires contracting agencies to promptly notify unsuccessful offerors that their proposals have not been selected for award, unless disclosure might prejudice the government's interests, FAR § 15.1001(c) only imposes an obligation upon contracting agencies to notify unsuccessful firms of the agency's award decision once the award has been made. We are aware of no legal requirement applicable to the circumstances here that contracting officials notify

offerors prior to making an award. FAA Seattle Venture, Ltd., B-234998.2, Aug. 9, 1989, 89-2 CPD ¶ 116. In any case, given our conclusion that the award was proper, this issue is academic.

The protest is denied.

for Seymour Ego
James F. Hinchman
General Counsel